IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.128 of 2000.

Reserved on 13. 8. 2007.

Date of decision: September 17,2007.

State of Himachal Pradesh. ..... **Appellant.**

Versus

Kuldeep Singh. ..... **Respondent.**

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? yes

For the Appellant: Mr. V. K. Verma, Addl.Advocate General.

For the respondent: Mr. Naresh K. Thakur, Advocate.

Surinder Singh, J.

The respondent was put on trial and acquitted under Sections 279, 337, 338, 304-A of the Indian Penal Code and Section 185 of the Motor Vehicles Act, in Police Challan No.166-1/1993 RBT No.79-II/1994, decided on 13.2.1998, by the Judicial Magistrate, Hamirpur, which has been assailed in this appeal.

The factual matrix of the case is that on 15.4.1993, the respondent was the driver of truck HIU-3837. The said truck was carrying a marriage

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes***

party. When it reached near village Kacherha, on the public way, at about 11 AM, the respondent lost its control, consequently it went off the road, rolled down in the field, leaving Pratap Singh @ Pinku, Kuldeep Singh @ Jogi, dead on the spot and Kamal Kishore and Manohar Lal injured persons had died in the hospital at Bhoranj later, due to accidental injuries, whereas, out of about fifty other members of the marriage-party, who were the occupants of the said truck, Harish Kumar, Amin Chand, Rajesh Kumar, Rattan Chand, Desh Raj, Tej Ram, Rakesh Kumar, Hem Chand, Surjit Singh, Mahant Ram, Prakash Chand, Pawan Kumar, Shambhu Ram, Paras Ram, Ranbir Singh, Prem Chand, Prakash Chand and Sanjay, sustained simple injuries, whereas, Anil Kumar, Joginder, Suresh Kumar, another Joginder Singh, Ishwar Dass, Nand Lal, Lekh Ram and Lekh Raj sustained grievous injuries. The respondent was allegedly drunk, he and the cleaner of the truck had absconded. The case was registered.

The police took the photographs of the spot, prepared the site plan, truck was mechanically examined, the postmortem reports and the MLCs of the injured were taken into possession and after recording the statements of the witnesses, the challan was presented in the court,

for the trial against the respondent, under the above sections.

The charges were framed and put to the respondent, to which he pleaded not guilty and claimed trial.

Nathu Ram (PW1) is a Constable, who was on his duty to execute the processes, he is an eye witness of the said accident. Rup Lal (PW3) was an occupant and the father of bridegroom Kuldeep Singh (deceased), whose marriage-party was traveling in the said truck. PW2 Dile Ram (injured), PW4 Rattan Lal, PW5 Rattan Chand (injured) son of Salig Ram, PW6 Surjit Singh, PW13 Rakesh Kumar, PW8 Lekh Ram, PW10 Rattan Chand (injured) s/o Prabhu Ram, PW11 Hem Chand (injured), PW12 Shabhu Ram (injured), PW15 Amin Chand (injured), PW16 Rakesh Kumar (injured) and PW18 Sagar Singh were occupants of the truck, but they broadly did not support the case of the prosecution, as alleged. However, admitted the accident.

The learned trial court recorded the judgment of acquittal on the ground that the prosecution witnesses did not support the prosecution case, consequently, it could not prove that the respondent was driving the truck

aforesaid in a rash and negligent manner, thus there was no direct nexus between the alleged act of the respondent causing death of the aforesaid deceased persons and injuries to other occupants of the truck.

Sh. V.K.Verma, learned Additional Advocate General has argued that the learned trial court, erred in not placing reliance upon the testimonies of Nathu Ram (PW1), Rup Lal (PW3) and Anil Kumar (PW4), who have proved the ingredients of the offence, but wrongly placed reliance on the statements of hostile witnesses for acquittal, who have also afforded corroboration to the prosecution case, therefore, the impugned judgment of acquittal can be converted into conviction.

Contra, Sh. Naresh K. Thakur, learned counsel for the respondent, while supporting the judgment of acquittal took me through the statement of witnesses and ventilated that there are no valid grounds to set aside the acquittal of the respondent.

I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and have reappraised the evidence on record.

As a matter of fact, the discussion of the learned trial court center around the

contradictions, occurring in the statement of PWs 1,3,4, regarding speed of the truck, whereas; neither the speed is the criterion to determine the rash or negligent act of driving by the respondent nor the testimonies of the hostile witnesses can be totally thrown out of consideration. The use of such depositions can be made by either of the parties to the extent it helps them.

In fact the truck was carrying a marriage-party and the accident had taken place, wherein four persons died and several others were seriously injured. The respondent did not probablize his case alleging due care and caution to overt the accident.

The common ingredient in all the offences charged u/s 279, 337 and 338 of the Indian Penal Code which is required to be proved is the act of rash or negligent driving which is sine qua non.

In Prabhakaran vs State of Kerala: AIR 2007 Supreme Court 2376, it has been held by the Supreme Court that "negligent act" is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A "rash

act" is a negligent act done precipitately. Thus negligence is the genes, of which rashness is the species.

"Rashness", consists in hazarding a dangerous or wanton act with the knowledge that it is so that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

In the instant case, the respondent is admittedly the driver of the truck in question and it is also an admitted fact that the truck was carrying a marriage-party. Rup Lal (PW3) was an occupant of the truck in question, his son Kuldeep Singh (bridegroom) had died in the accident. According to him, about 50 persons were traveling in the truck and the respondent was driving the same at a very high speed. However,

the respondent was cautioned to drive slowly but he did not adhere to it and caused the said accident. This witness has categorically stated that the accident occurred, due to rash and negligent driving of the respondent. In the cross-examination, the witness has stated that there was a curve on the spot and stones were stacked by the side of the road but denied that on account of the curve and stacking of the stones on the side of the road, the accident had taken place. His testimony has been corroborated by Constable Nathu Ram (PW1), who happened to be present on the spot to execute the summons in a nearby village. He has stated that the truck was at a speed of more than 100 KM per hour and the persons sitting on the Tool-Box of the truck were shouting to stop the truck but the respondent did not care for them. After going about 20 yards ahead of him it jumped out of the road and over turned into the field. As a result of which, two persons died on the spot and other injured persons were removed to the hospital. He informed Kishore Chand (ASI) telephonically about the accident. The respondent did not take the risk of putting the same defence as put to PW1, aforesaid. PW7 Rattan Lal was sitting at the back portion of the truck and deposed that truck

was at a high speed. Anil Kumar injured (PW14) has also deposed that the truck was being driven by the respondent like an aeroplane.

Though Dile Ram (PW2), Rattan Lal (PW4), Rattan Chand (PW5), Surjit Singh (PW6), Lekh Ram (PW8), Rattan Chand s/o Prabhu Ram (PW10), Hem Chand (PW11), Shambhu Ram (PW12), Rakesh Kumar (PW13), Ami Chand (PW15), Rakesh Kumar (PW16), Rajesh Kumar (PW17), Sagar Singh (PW18), Mauji Ram (PW20) did not support the case of the prosecution, as alleged, but they have admitted that the accident occurred on account of narrow curve and one of them had admitted in the cross-examination that in order to save the children, the respondent took the truck towards extreme left which mounted on the heap of stones and with a cracking sound it went off the road causing the accident. It has no where been suggested to any of the witness nor explained by the respondent, as to what due care and caution was taken by him to avoid the accident. If he wanted to save children and took the truck to its extreme left side than what precaution he had taken to save the other occupants of the vehicle.

Dr. Vinod Kapil (PW21) has proved the Medico-legal certificates Ex.PW21/A to Ex.PW21/K, issued by him in favour of the injured, Anil

Kumar, Prakash Chand, Prem Chand, Shambhu Ram, Pawan Kumar, Prakash Chand, Mahant Ram, Surjeet Singh, Hem Chand, Rakesh Kumar and Nand Lal respectively out of which Anil Kumar (PW14) had sustained grievous injury i.e. fracture of left clavicle his X-ray is Ex.PW-19/A-B and all other sustained simple injuries. PW22 Dr. Rajinder Minhas has proved the medico-legal certificates Ex.PW-22/A to Ex.PW-22/Q issued by him in favour of the injured, who were examined by him. Out of them Joginder s/o Desh Raj sustained fracture of lower end of humerous and dislocation of elbow joint, Joginder s/o Sh.Bansi also sustained grievous injury, his left ear was torn and x-ray is Ex.PW19/G, Ishwar Dass sustained fracture of shaft of humerous and (x-ray is Ex.PW19/H), Nand Lal got fracture of radius (X-ray PW19/I&J), Lekh Raj was found fracture of survical neck (x-ray PW19/K) and Loka Ram also sustained the fracture of femur his x-ray is Ex.PW19/L. Both the Doctors have stated that the injuries to the above injured person could have been caused in a vehicular accident which is not disputed in their cross-examination.

Dr. K. C. Kaushal (PW24) had conducted the post mortem on four dead bodies and his reports are Ex. PW24/A to Ex. PW24/D. Site plan

Ex.PW27/B has shown the place of accident but no debris or stones have been shown in the site plan nor the Investigating Officer (PW27) has been cross-examined on this point.

Respondent in his statement, under Section 313 Cr.P.C., has admitted that there were 50 persons travelling in his truck, out of which two expired on the spot and two died later on. As already said he could not probablize his defence.

On a close scrutiny of the evidence on record, I have found that the truck is a goods vehicle and is not meant for transporting the human beings that too in such a huge number on a public way, even in that case the speed of 20 km per hour would be excessive. Further carrying of 50 persons in the truck is itself a negligent act of the respondent because in the given circumstances a prudent man will never do such an act, which would endanger the human lives. On the top of it, the respondent has failed to prove even by preponderance of probabilities that he took due care and caution to avert the accident, since it was his duty to save the human beings traveling in the truck as well as the road users. The trial court had put implicit reliance on the testimony of hostile witnesses to throw out the

case of the prosecution, without seeking corroboration which is absolutely unacceptable, thus the approach of the court is fallacious. Contra, their statements, on analyzing the factual scenario, coupled with the statement of PWs 1,3 and 14 discussed above, proves the offences charged except Section 185 of the Motor Vehicles Act, which fails on account of short of relevant evidence. Accordingly, the impugned judgment of acquittal is partly allowed, while maintaining the acquittal under section 185 of the Motor Vehicles Act, acquittal of the respondent under Sections 279, 304-A, 337 and 338 IPC is set aside and the respondent is convicted for the aforesaid offences charged. The respondent shall be heard on the point of sentence.

September 17, 2007 (Surinder Singh),J.
(D)

Cr. Appeal No.128 of 2000
Reserved on: 13.8.2007
Announced on: 17.09.2007
Heard on quantum of sentence:18.9.2007

18.9.2007 Present: Mr. V K Verma, Addl. Advocate General for the appellant-State.

Mr. Naresh K.Thakur, Advocate, for the respondent.

I have heard the learned counsel for the respondent-Convict on the point of sentence. It is submitted that the respondent-convict is the sole bread-earner in the family and he has no past criminal history to his discredit. The offence has taken place in the year 1993 and he has faced torture of trial and uncertainty in appeal, therefore, a lenient view may be taken.

Contra, Sh. V K. Verma, learned Additional Advocate General, has submitted that there is a rising trend in the Motor Vehicular accidents. The sentence should be deterrent. The rash and negligent driving by the respondent has caused the death of four persons and serious injuries to several others, therefore, no sympathy can be shown to him

I have considered the rival contentions of the parties and have tried

to strike out the balance, so far as the punishment is concerned.

There is no question of taking a lenient view and granting benefit of section 4 of the Probation of Offenders Act in view of the verdict of the apex Court rendered in *Thakur Singh versus State of Punjab* (2003)9 SCC 208. Further, in *Dalbir Singh vs State of Haryana* (2000)5 SCC 82, it has been observed and held by the Supreme Court as under:-

"……While considering the quantum of sentence to be imposed for the offence of causing death by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident' or even if any accident occurs it need not necessarily result in the death of any human being' or even if such death ensues he might not be convicted of the offence

and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of the trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

This dictum has not been departed till date.

Taking note of the above judgment of the apex court, keeping in view the galloping trend in road accidents resulting in the devastating consequences visiting the victims and their families I am constrained to pass and order to sentence the respondent-convict under the aforesaid sections in the following terms:-

i) to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- under section 279 IPC and in case of default in the payment of fine to undergo simple imprisonment for a period of one month;

ii) to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.500/- under section 337 IPC and in case of default in the payment of fine to undergo simple imprisonment for a period of one month;

iii) to undergo rigorous imprisonment for a period of one year and to pay of fine of Rs.1,000/- under section 338 IPC and in case of default in the payment of fine to undergo simple imprisonment for a period of one month;

iv) to undergo rigorous imprisonment for a period of one year and to pay of fine of Rs.5,000/- under section 304-A IPC and in case of default in the payment of fine to undergo simple imprisonment for a period of two months.

All the sentences to run concurrently.

The bonds of the respondent are hereby cancelled and the respondent-convict is directed to deposit the amount of fine and surrender before the trial court to serve out the sentence on or before 24.10.2007.

The Registry is directed to supply an authenticated copy of this judgment and order to the respondent-convict through his counsel free of costs forthwith.

The appeal is accordingly disposed of.

September 18,2007 (Surinder Singh),J.
(D)